

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

MODESTO ROBERTO MOLINA

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

CIVIL NO. 04-1828 (DRD)

**REPORT AND RECOMMENDATION**

Petitioner's Section 2255 motion must be DENIED in its entirety. In the same, he claims that his sentence violates Blakely v. Washington, 124 S. Ct. 2531 (2004) because the Court and not the jury imposed upon him a supervisory role at sentencing under the Sentencing Guidelines. This argument fails in light of United States v. Booker, 125 S. Ct. 738 (2005) which held that the Sentencing Guidelines are advisory, and not mandatory. More so, Blakely is inapplicable to the collateral review of a criminal conviction. See Cirilo-Muñoz v. United States, 404 F. 3d 527, 533 (1<sup>st</sup> Cir. 2005). In addition, petitioner's conviction was the result of a plea agreement, which was followed by the Court and included a supervisory role adjustment. In light of this, it is obvious that the Court would not have sentenced petitioner otherwise. See United States v. Antonakopoulos, 399 F. 3d 68 (1<sup>st</sup> Cir. 2005).

Under the provisions of Rule 72(d), Local Rules, District of Puerto Rico, any party who objects to this report and recommendation must file a written objection thereto with the Clerk of the Court within ten (10) days of the party's receipt of this report and recommendation. The written objections must specifically identify the portion of the recommendation, or report to which objection is made and the basis for such objections. Failure to comply with this rule precludes further appellate review. See Thomas v. Arn, 474 U.S. 140, 155 (1985), reh'g denied, 474 U.S. 1111(1986); Davet v. Maccorone, 973 F.2d 22, 30-31 (1<sup>st</sup> Cir. 1992).

**SO RECOMMENDED**

Date: August 17, 2005

*St. Gustavo A. Gelpi*  
GUSTAVO A. GELPI  
United States Magistrate Judge